MAHDI JAHED BARATMOHAMMAD v. PP

COURT OF APPEAL, PUTRAJAYA
AZIAH ALI JCA
ROHANA YUSUF JCA
AHMADI ASNAWI JCA
[CRIMINAL APPEAL NO: B-05-37-02-2014 (IRN)]
5 JANUARY 2016

CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 39B(1)(a) – Trafficking in dangerous drugs – Defence – Innocent carrier – Manner drugs were concealed – Whether inferred knowledge – Whether supported case of innocent carrier – Whether defence an afterthought*

EVIDENCE: *Exhibit – Break in chain of evidence – Offence under s. 39B(1)(a) of Dangerous Drugs Act 1952 – Trafficking in dangerous drugs – Movement of drugs – Whether sufficiently explained – Whether discrepancy in markings of exhibits explained – Whether evidence of tampering shown or raised – Whether drug exhibits identified by prosecution witnesses – Whether created doubt as to identity of drugs exhibits – Whether there was break in chain of evidence*

The appellant was charged and tried at the High Court on three separate charges of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). Upon his arrival at the Arrival Hall of the Kuala Lumpur International Airport, the appellant was arrested by SP3 and taken for a body search. The body search revealed three transparent plastic wrappers concealed in his underwear, which was subsequently found to contain 237.7g of methamphetamine, the basis of the first charge. Suspecting that there was foreign substance in the appellant's stomach, he was taken to the hospital where he excreted 47 capsules in total, which constituted the second charge against him. Later, another 11 capsules, which formed the basis of the third charge, were excreted by the appellant. The trial judge found a *prima facie* case on all three charges and called the appellant to enter his defence. The appellant's defence was that one Hojat had threatened him when he failed to settle his debt and was made to swallow the capsules and conceal the three plastic packets in his underwear before his departure to Malaysia. The appellant denied any knowledge of the content of the packets. The trial judge found the defence had failed to rebut the statutory presumption under s. 37(da) of the DDA and, upon being satisfied that the defence had failed to raise any reasonable doubt on the prosecution's case, convicted the appellant on all three charges and sentenced him to mandatory death sentence. Hence, this appeal against the conviction and sentence. The issues raised in the appeal were: (i) whether there was break in the chain of evidence; (ii) whether prosecution failed to investigate the existence of Hojat; (iii) whether knowledge of the dangerous drugs was proved; and (iv) whether the defence was given reasonable consideration.

A **Held (dismissing appeal)**
Per Rohana Yusuf JCA delivering the judgment of the court:

(1) There was no break in the chain of evidence because there was sufficiently clear explanation on the movement of the drug exhibits. The drug exhibits were first under the custody of SP3 and they were then handed over to the investigating officer ('SP8') and subsequently to the chemist for analysis. There was no evidence of tampering shown nor was it raised by the appellant. The same drug exhibits had been identified by all the prosecution witnesses in court which left no doubt that they were the same drugs recovered from the appellant. (para 21)

(2) SP8 had explained meticulously the way she handled and marked the exhibits and was not cross-examined on the purported discrepancy in the markings. At the appellate stage, the court could not be made to analyse the photographs exhibited when no evidence was adduced as to why the marking shown in the photographs appeared differently from what was stated by SP8. The trial judge had accepted the explanation and hence, the findings ought not to be disturbed. (paras 22 & 24)

(3) The failure of the appellant to raise issue on the delay of the marking of the drug exhibits during the trial with the prosecution witnesses had deprived the opportunity for the explanation. In any event, explanation of delay by the prosecution was not necessary since the movements of the drugs were clearly explained. (para 25)

(4) The defence did not raise the existence of Hojat at the earliest opportunity to contend that the appellant was an innocent carrier. The existence of Hojat was not raised upon the appellant's arrest by SP3 or when he was under the control of SP8. Neither was it put to the witnesses during cross-examination. The name of Hojat was only raised during cross-examination of SP8 by the appellant. Hence, the existence of Hojat was an afterthought and Hojat was a fictitious character created by the appellant. (para 28)

(5) The law on the application of defence of innocent carrier is trite. The manner in which the drugs were carried by the appellant did not support a case of an innocent carrier. The way the appellant concealed the drugs in his underwear showed that he knew that they were illegal substances. The appellant could not rely on the defence of wilful blindness when he in fact turned a blind eye on the content of the capsules and the plastic packages he was carrying. Further, the knowledge of the dangerous drugs by the appellant had clearly been evidenced from the way the drugs were carried by the appellant in his underwear and his body. In the circumstances, there was no merit in the issues raised by the appellant. (paras 29 & 31)

***Bahasa Malaysia** Headnotes*

Perayu dipertuduh dan dibicarakan di Mahkamah Tinggi atas tiga pertuduhan berasingan pengedaran dadah berbahaya di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Setibanya di Balai Ketibaan Lapangan Terbang Antarabangsa Kuala Lumpur, perayu telah ditangkap oleh SP3 dan dibawa untuk pemeriksaan badan. Pemeriksaan badan mendedahkan tiga bungkusan plastik lutsinar tersembunyi dalam seluar dalamnya, yang didapati mengandungi 237.7g methamphetamine, asas bagi pertuduhan pertama. Mengesyaki ada bahan asing dalam perut perayu, dia dibawa ke hospital di mana dia mengeluarkan 47 kapsul melalui duburnya membentuk pertuduhan kedua terhadapnya. Kemudian, 11 lagi kapsul, yang menjadi asas pertuduhan ketiga, dikeluarkan melalui dubur perayu. Hakim bicara memutuskan wujud kes *prima facie* atas kesemua pertuduhan dan perayu dipanggil membela diri. Pembelaan perayu adalah bahawa seorang yang bernama Hojat mengugutnya apabila dia gagal melangsaikan hutangnya dan disuruh menelan kapsul-kapsul tersebut dan menyembunyikan tiga lagi bungkusan plastik di dalam seluar dalamnya sebelum berlepas ke Malaysia. Perayu menafikan pengetahuan mengenai kandungan bungkusan-bungkusan tersebut. Hakim bicara mendapati pembelaan gagal mematahkan anggapan statutori di bawah s. 37(da) ADB dan berpuas hati bahawa pembelaan gagal membangkitkan apa-apa keraguan munasabah atas kes pendakwaan. Perayu disabitkan atas ketiga-tiga pertuduhan dan hukuman mati mandatori dijatuhkan terhadapnya. Dengan itu, rayuan ini terhadap sabitan dan pertuduhan. Isu-isu yang dibangkitkan adalah: (i) sama ada wujud kelompangan dalam rantaian keterangan; (ii) sama ada pihak pendakwaan gagal menyiasat kewujudan Hojat; (iii) sama ada pengetahuan tentang dadah berbahaya berjaya dibuktikan; dan (iv) sama ada pembelaan telah dipertimbangkan secara munasabah.

Diputuskan (menolak rayuan)
Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:

(1) Tiada kelompangan dalam rantaian keterangan kerana penjelasan yang mencukupi tentang pergerakan ekshibit dadah telah diberikan. Ekshibit dadah mulanya dalam pengawasan SP3 dan kemudian diberikan kepada pegawai penyiasat ('SP8') dan seterusnya kepada ahli kimia untuk dianalisis. Tiada keterangan campur tangan ditunjukkan atau dibangkitkan oleh perayu. Ekshibit dadah yang sama dikenal pasti oleh semua saksi pendakwaan di mahkamah, dengan itu, tidak menimbulkan apa-apa keraguan bahawa ia adalah dadah yang sama diperolehi daripada perayu.

(2) SP8 menjelaskan secara terperinci cara dia menangani dan menanda ekshibit-ekshibit tersebut dan tidak disoal balas mengenai percanggahan yang dikatakan dalam penandaan. Dalam peringkat rayuan, mahkamah tidak boleh diminta menganalisis gambar-gambar yang diekshibitkan apabila tiada keterangan dikemukakan mengapa penandaan dalam

gambar-gambar tersebut kelihatan berbeza daripada yang dinyatakan oleh SP8. Hakim bicara menerima penjelasan tersebut dan dengan itu, dapatan tersebut tidak wajar diganggu.

(3) Kegagalan perayu membangkitkan isu kelewatan penandaan ekshibit dadah semasa perbicaraan kepada saksi-saksi pendakwaan menafikan peluang untuk penjelasan. Walau bagaimanapun, apa-apa penjelasan tentang kelewatan oleh pendakwaan tidak diperlukan kerana pergerakan dadah dijelaskan dengan terperinci.

(4) Pihak pembelaan tidak membangkitkan kewujudan Hojat pada peluang terawal untuk menghujahkan bahawa perayu adalah pembawa tidak bersalah. Kewujudan Hojat tidak dibangkitkan selepas tangkapan perayu oleh SP3 atau semasa dia dalam kawalan SP8. Juga, ia tidak dikemukakan kepada saksi-saksi semasa pemeriksaan balas. Nama Hojat hanya dibangkitkan semasa pemeriksaan balas SP8 oleh perayu. Oleh itu, kewujudan Hojat adalah fikiran terkemudian dan Hojat adalah peranan palsu yang direka oleh perayu.

(5) Undang-undang bagi pemakaian pembelaan pembawa tidak bersalah adalah matan. Cara dadah dibawa oleh perayu tidak menyokong kes pembawa tidak bersalah. Cara perayu menyembunyikan dadah tersebut di dalam seluar dalamnya menunjukkan dia mengetahui bahan tersebut melanggar undang-undang. Perayu tidak boleh bersandar pada pembelaan kebutaan sengaja apabila dia sebenarnya tidak mengendahkan kandungan kapsul dan bungkusan plastik yang dibawanya. Malahan, pengetahuan tentang dadah berbahaya oleh perayu jelas dibuktikan berdasarkan cara dadah dibawa oleh perayu di dalam seluar dalamnya dan badannya. Dalam keadaan tersebut, isu-isu yang dibangkitkan oleh perayu tidak bermerit.

Case(s) referred to:
Gunalan Ramachandran & Ors v. PP [2004] 4 CLJ 551 CA ***(refd)***
Leow Nghee Lim v. Regina [1955] 1 LNS 53 HC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Hla Win [1995] 2 SLR 424 ***(refd)***
PP v. Mohd Farid Mohd Sukis & Anor [2002] 8 CLJ 814 HC ***(refd)***
Ubaka v. PP [1995] 1 SLR 267 ***(refd)***
Yusoff Kassim v. PP [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376 SC ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(d), (da), 39B(1)(a), (2)

For the appellant - Muhammad Rafique Rashid Ali; M/s Law Practice of Rafique
For the respondent - Mohd Mukhzary Faris Mohd Mokhtar; DPP

[Appeal from High Court, Shah Alam; Criminal No: 45A-81-2011 (affirmed)]

Reported by S Barathi

JUDGMENT

Rohana Yusuf JCA:

[1] The appellant was charged and tried at the High Court in Shah Alam for three separate charges of trafficking in dangerous drugs, under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (DDA) punishable under s. 39B(2) of the same Act. The appellant was convicted on all the three charges and sentenced to mandatory death sentence. This is his appeal against his conviction and sentence which we have dismissed.

[2] The three charges against the appellant read in Bahasa Malaysia as follows:

> Pertuduhan Pindaan Pertama:
>
> Bahawa kamu pada 24 September 2010, jam lebih kurang 10.30 pagi bertempat di hadapan tempat tuntutan bagasi F, Balai Ketibaan Antarabangsa, Aras 3, MTB KLIA, Sepang di dalam Daerah Sepang, di dalam Negeri Selangor Darul Ehsan, telah didapati memperedarkan dadah berbahaya sejumlah berat 237.7 gram Methamphetamine dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.
>
> Pertuduhan Pindaan Kedua:
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> Bahawa kamu pada 24 September 2010, jam lebih kurang 4.35 petang sehingga 24 September 2010 jam lebih kurang 10.20 malam bertempat di tandas Wad Kecemasan, Hospital Serdang, di dalam Daerah Sepang, di dalam Negeri Selangor Darul Ehsan, telah didapati memperedarkan dadah berbahaya sejumlah berat 264.5 gram Methamphetamine dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.
>
> Pertuduhan Pindaan Ketiga:
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> Bahawa kamu pada 25 September 2010, jam lebih kurang 11.00 pagi sehingga 25 September 2010 jam lebih kurang 1.30 tengahari, bertempat di tandas Wad 6C, Ruangan 23 hingga 26, Hospital Serdang, di dalam Daerah Sepang, di dalam Negeri Selangor Darul Ehsan, telah didapati memperedarkan dadah berbahaya sejumlah berat 63.3 gram Methamphetamine dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

The Prosecution's Case

[3] The appellant arrived at the Arrival Hall, KLIA on 24 September 2010 at about 10.30am and was arrested by D/Kpl Azizi bin Atan (SP3) and D/Kpl Faizul Asraf bin Mustapa (SP4) at Carousel F on Level 3. The appellant was taken to Pejabat Narkotik where a body search on him was conducted.

When SP3 felt a bump below the buttock of the appellant, SP3 instructed the appellant to remove his pants. It was discovered that he was wearing two pairs of underwear. Upon removing the second pair of his underwear three transparent plastic wrappers (exh. P13 (1-3)) fell on the floor from the space between his scrotum and legs. Exhibit P13 (1-3) was later found to contain 237.7g of methamphetamine. This form the basis of the first charge.

[4] The appellant was then handed over to ASP Zamri bin Razak thereafter to Insp Didi Fairuz bin Zainal Abidin (SP5) and his team. The team comprised D/Kpl Fairol Anuar bin Bujang (SP6) and Lans/Kpl Mohd Riduan bin Ahmad (SP7) and Lans/ Kpl Adli Hafiz. Thereafter a seizure list (P34) was prepared and issued by SP3 affixed with the appellants' signature. A police report was lodged at Pejabat Siasatan Narkotik KLIA before the appellant was taken to Serdang Hospital on suspicion that there was foreign substance in his stomach.

[5] At the hospital, after the appellant gestured to SP5 that he wanted to defecate he was taken to the emergency ward bathroom. The appellant then first excreted ten capsules (P17 (1-10)) at about 4.35pm, followed by 14 capsules (P19 (1-14)) at 5.30pm. Another 14 was discharged at 9.20pm (P21 (1-25)) another nine capsules (P23 (1- 9)) at 10.20pm, making a total discharge of 47 capsules. These capsules constituted the second charge against the appellant.

[6] The appellant was then transferred to Ward 6C bed 23 of the hospital. The following day on 25 September 2010 at about 11am he further excreted six capsules (P25 (1-6)) and followed by another three capsules (P27 (1-3)) at 12.20pm, one more (P29) at 12.30 pm and one final capsule (P31) at 1.50pm making a total of 11 capsules. This form the basis of the third charge against the appellant.

[7] Upon confirmation by the doctor that no more substance was in the stomach of the appellant he was discharged from the hospital and handed over to the Investigation Officer (IO) Insp Haryati binti Zaharuddin (SP8) for investigation.

***Prima Facie* Case**

[8] At the end of the prosecution's case, the learned trial judge accepted the Chemist (SP2) evidence that the white crystalline substances in exh. P13 (1-3) referred to in the first charge contains 237.7g methamphetamine. These drug exhibits were the ones found on the appellant when he was caught at KLIA. The capsules discharged at the Serdang Hospital on 24 September 2010 in exhs. P17 (1-10), P19 (1-14), P21 (1- 25) and P23 (1-9) contained 264.5g methamphetamine and they constituted the offence under the second charge. The capsules in exhs. P25 (1-6), P27 (1-3) and P29 were found to contain 63.3g methamphetamine which constituted the third charge. These are dangerous drugs as defined under s. 2 of the DDA.

[9] In relation to the first charge, the learned trial judge found possession proven when the drug exh. P13 (1-3) slipped from the appellant's scrotum lining under the area between his anus and scrotum at the time he was caught at KLIA. On this fact, the learned judge in her grounds of judgment found that the appellant had physical custody and control of the said drugs. The learned trial judge was satisfied that looking at the way the drugs were concealed in his underwear and the fact that the appellant had worn two pairs of underwear (P36 and P37) plus an elastic three-quarter length knee pants in order to deliberately hide the drugs, showed that he had knowledge of what he was concealing. On these facts the learned judge found that the appellant knew what he was doing and had knowledge of the drugs.

[10] On the second and third charges involving a total of 47 capsules and 11 capsules discharged by the appellant at Serdang Hospital, it was not disputed that the appellant had swallowed them. The learned judge concluded that the appellant was therefore in custody and control of all these swallowed drug exhibits. On this fact the learned judge was satisfied that the appellant had the exclusive physical custody and control of the drugs. The learned judge found possession and knowledge without any necessity to invoke s. 37(d) (see *Leow Nghee Lim v. Regina* [1955] 1 LNS 53; [1956] MLJ 28 at p. 371: *PP v. Mohd Farid Mohd Sukis & Anor* [2002] 8 CLJ 814; [2002] 3 AMR 3457 at p. 3483; [2002] 2 MLJ 401; *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337).

[11] The learned judge then invoked s. 37(da) of the DDA to presume trafficking in view of the weight of the methamphetamine of 237.7g, 264.5g and 63.3g respectively which far exceeded the minimum threshold for trafficking under DDA. The learned judge then found that a *prima facie* case against the appellant on all the three charges had been established. The appellant was called to enter his defence on all the charges. The appellant testified on oath.

The Defence

[12] In his defence the appellant gave the following account. He said six months before his arrest, he had borrowed USD 4000 from a person known as Hojat whose real name is Jaafar Isaloo to operate his restaurant business. When he failed to pay the debt Hojat threatened to send him to jail, kill him, his wife and children unless he swallow the capsules and carry the three plastic packages given by Hojat. He said he was told that they were non prescribed and illegal medicine to be brought to Malaysia. The day before the appellant flew to Malaysia, Hojat was with him in a hotel. They were later joined by the appellant's friend known as Siavash Karbejear (SD2) whom the appellant had invited. Inside the room he was made to swallow the capsules with water in the presence of Hojat. The appellant said he believed the capsules contain medicine and was unlawful in Malaysia. With the threat made by Hojat to him he said he had no other alternative but to swallow them.

[13] Since exh. P13 were sealed, he said he had no knowledge of its content. What he had been told by Hojat was that they were illicit medicine in Malaysia. Hojat told him to conceal the three plastic packets in exh. P13 (1-3) in his underwear to avoid detection by the Malaysian police. He was given some money at Ebril airport on the next day by Hojat. The appellant said Hojat joined him in the same flight to Malaysia. The appellant admitted that though he knew that they were illegal substance, however because Hojat was in the same flight, he was not worried. He believed it would not pose any problem to him since Hojat would pay any penalty or fine on his behalf, if any.

[14] Siavash Karbejear (SD2) in his evidence confirmed that he was present in the hotel together with the appellant and Hojat the day before the appellant's departure to Malaysia sometime in September 2010. SD2 said the appellant told him that he owed Hojat about six million Iranian currency and could not pay the debt. SD2 also confirmed he knew that the appellant was asked to bring some illegal medicine to Malaysia. He further said that after the appellant swallowed the medicine they talked for about one hour. He said he did not witness the appellant swallowing the medicine or concealing the three plastic packets in the underwear.

Findings Of The High Court

[15] The learned trial judge found that the assertion by the appellant that he was under duress was not proven because both the evidence of the appellant and SD2 did not suggest that the appellant was in dire situation or that he was subjected to any constraint. The fact that the appellant was at liberty to call SD2 to join him at the hotel showed that he was free and at liberty to move about. This fact was in contradiction to a behaviour of a person who was under threat. The learned judge found no evidence to show that the appellant was put at knife or gun point. Instead the learned judge found the whole surrounding circumstances would show a preparatory stage of undertaking to transport the drugs to the airport which was continued the next day before boarding for Malaysia. On these reasons the learned trial judge said she was not convinced that any threat was made on the appellant by Hojat.

[16] Upon analysing the evidence raised in the defence, Her Ladyship found that the defence had failed to rebut the statutory presumption under s. 37(da) of the DDA. The learned trial judge was satisfied that the defence had failed to raise any reasonable doubt on the prosecution's case. The appellant was convicted on all the three charges.

The Appeal

[17] Although the petition of appeal contain several grounds of appeal, in his written submission learned counsel raised issues in relation to:

(i) break in the chain of evidence,

(ii) failure of prosecution to investigate the existence of Hojat,

(iii) knowledge of the dangerous drugs not proven; and

(iv) the defence was not given reasonable consideration.

However, before us learned counsel mainly focussed his submission on the issue of the break in the chain of evidence in relation to the drug exhibits particularly in the second and third charges.

Break In The Chain Of Evidence

[18] In relation to the allegation that there was a break in the chain of evidence, learned counsel submitted that there was discrepancy in the oral evidence of the IO in relation to the marking of drug exhibits excreted by the appellants. Didi Fairuz bin Zainal Abidin (SP5) said he had marked each of the 58 capsules as A1-A58 respectively after all the capsules were discharged and cleaned (p. 68 of the record of appeal). However, the IO (SP8) in her evidence said the same capsules were marked H1 to H58 in red (pp. 94 to 97 of the record of appeal). She further said after marking them in red, and at about 10pm, she had asked D/Kpl Suhaime Bin Osman (SP1) to take photographs of the exhibits. The said photographs are in exhs. P8 (1-14).

[19] The appellant's counsel pointed to us that the photographs in P8 do not reflect the red marking as stated by SP8. Instead, only black markings with the letter "A" could be seen with the corresponding numbers marked on the capsules. Learned counsel submitted that the oral evidence of SP8 therefore was not supported by the documentary evidence produced. This disparity was contended to raise reasonable doubt on the identity of the drug exhibits that was seized and produced at the High Court. Learned counsel then submitted that the learned judge did not address this disparity. He cited in authority the Federal Court case of *Yusoff Kassim v. PP* [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376; [1992] 2 MLJ 183 to contend that the failure to address the contradiction would not make the prosecution's case proved beyond reasonable doubt.

[20] Further to that, learned counsel also pointed out that there was a time gap or delay in the marking of the exhibits by SP8. SP8 marked the exhibits only on 28 September 2010 when she had received the exhibits on 24 September 2010. There was no explanation offered on this delay. This unexplained delay was submitted to have further created doubt on the identity of the drug exhibits. According to learned counsel, the time gap requires explanation otherwise it would compromise the integrity of the drug exhibits, the subject matter of the severe charges and grave sentence faced by the appellant.

[21] Upon our scrutiny of the appeal records, we agree with the learned DPP that there was no break in the chain of evidence in this case because there was sufficiently clear explanation on the movement of the drug exhibits. The drug exhibits were first under the custody of SP3 and they were then handed over to SP8 and subsequently to the chemist (SP2) for analysis. It was clear in evidence that the same drug exhibits have been identified by

all the prosecution's witnesses in court. The witnesses had identified the same drug exhibits and which left no doubt that they were the same drugs that were found on the appellant as well the ones swallowed by him.

[22] The IO had explained meticulously at pp. 101 to 103 of the appeal records the way she handled and marked the exhibits. There was no cross-examination by learned counsel as to how the purported discrepancy in the markings testified as H1 to H58 were not shown on the photographs in P8, during the trial. This court sitting at the appellate stage cannot be made to analyse the photographs exhibited when no evidence was adduced as to why the marking shown in the photographs appear differently from that stated by SP8. The appellant ought to have sought explanation from the witnesses themselves at the trial. Without such evidence it would not be fair to speculate or to urge this court to re-examine the photographs without any evidence adduced by the respective witnesses. Having said that, what we saw in the appeal records are the meticulously explanation on the marking of the exhibits by the IO at pp. 101 to 103 of the notes of proceedings. The learned judge had accepted the explanation and we have no reason to disturb such a finding.

[23] In her grounds of judgment the learned trial judge had in fact addressed in depth, the allegation made by the appellant on the break in the chain of evidence. She had carefully analysed the evidence on the movement of drug exhibits at various stages and was satisfied that the same drug exhibits were before her during the trial. We are in no position to disturb Her Ladyship's finding of facts which were clearly supported by unshaken evidence of the witnesses before her. It was clear in evidence that the seized drugs together with other items were placed inside SP3's room in her locker under lock and key, where she alone had access to (see p. 93 of the record of appeal jilid 2). The exhibits have been properly marked which enable SP8 to identify them so clearly during the trial.

[24] No evidence of tampering was shown nor was it raised by the appellant whilst the exhibits were in her custody. What is important is that the substance recovered from the appellant was what was analysed by the chemist. They were found to be dangerous drugs and it is for the same substance that the appellant were charged and tried and found guilty (see *Gunalan Ramachandran & Ors v. PP* [2004] 4 CLJ 551). We therefore do not find merit in this ground of appeal.

[25] The failure of the appellant to raise issue on the delay of the marking of the drug exhibits during the trial with the prosecution witnesses, had deprived the opportunity of such explanation been made. It would not necessitate any explanation of delay by the prosecution since the movement of the drugs were so clearly explained. No question was ever raised on the delay in the course of this explanation been made . We are in agreement with

the learned judge that on evidence before her, there can be no doubt that the same drug exhibits were the ones defecated by the appellant and produced in the trial.

Other issues

[26] The other issues raised by the appellant in the written submission such as the failure to investigate the existence of Hojat, knowledge of the dangerous drugs by the appellant not proven and the failure of the learned trial judge to judicially consider defence case, were not canvassed before us.

[27] We would deal with them briefly in this grounds of judgment. The learned High Court Judge was said to have failed to appreciate the fact that the existence of Hojat would have in itself exonerate the appellant from all charges. According to learned counsel, the learned DPP had failed to adduce any evidence to disprove the existence of Hojat. The existence of Hojat it was contended, would be enough to raise reasonable doubt that the appellant was a mere carrier acting under a threat from the actual trafficker.

[28] Firstly, we noted that the defence did not raise the existence of Hojat at the earliest opportunity to contend that he was an innocent carrier. The appellant also did not raise the existence of Hojat upon being arrested by SP3 or when he was under the control of SP8. During the cross-examination of SP3, SP4 and SP5 by the appellant the existence of Hojat was also not put to the witnesses. The name of Hojat came about only during the cross-examination of SP8 by the appellant. Looking at the facts and circumstances of the case we agree with the learned DPP that the existence of Hojat was an afterthought and that Hojat was a fictitious character created by the appellant.

[29] We agree with the learned DPP on his rebuttal argument that the manner in which the drugs were carried by the appellant do not support a case of an innocent carrier. It is plainly clear, the way the appellant concealed the drugs in his underwear showed that he knew that they were illegal substance. The law on the application of a defence of innocent carrier is trite. The appellant cannot rely on the defence of wilful blindness when he in fact turned a blind eye on the content of the capsules and the plastic packages he was carrying (see *Ubaka v. PP* [1995] 1 SLR 267, *PP v. Hla Win* [1995] 2 SLR 424).

[30] The appellant next raised issue that the learned High Court Judge had erred in inferring that the appellant had knowledge of the dangerous drugs in relation to the first charge. The appellant contended that mere physical possession of the drugs by the appellant would be insufficient to prove that the appellant possessed the requisite knowledge of the dangerous drugs. Learned counsel argued that the appellant cannot be attributed with knowledge of the drugs as it was clear in evidence that the appellant was under the impression that he was carrying non prescribed medicine and they were unlawful substance. We do not find merit in this argument for all the reasons we had stated in the preceding paragraphs.

[31] On the defence case, we agree with the learned DPP that the learned judge had given her thorough consideration of the defence's case as per her grounds of judgment at p. 291 of the record of appeal jilid 4 when she remarked "However no matter how weak or unreasonable the defence story may be, the court cannot just brush it aside without any proper or due consideration …". The DPP, when rebutting the appellant's contention, submitted that the appellant has carried the drugs in a way that the appellant knew the items were drugs or illegal items. The knowledge of the dangerous drugs by the appellant has clearly been evidenced from the way the drugs was carried by the appellant in his underwear and his body. The learned judge had deliberated at length on the defence raised by the appellant and made clear finding on the facts before her that the appellant was not under any threat to carry drugs to Malaysia. We cannot find any reason to disturb her finding on the same. We are satisfied that there was no merit in all the issues raised by the appellant in the present appeal.

[32] Having perused through the appeal records we found the evidence against the appellant was overwhelming. There was no misdirection by the learned trial judge both on facts and law and we found the conviction against the appellant safe. We dismissed the appeal and affirmed the conviction and sentence meted out by the learned judge.